

The record before the Appeals Board is the same as that considered by the Administrative Law Judge, including the documents filed of record with the Division of Workers Compensation in this docketed matter, the transcript of the Preliminary Hearing before Administrative Law Judge Floyd V. Palmer on February 17, 1994, and the exhibits attached thereto.

ISSUES

The Administrative Law Judge denied claimant's application for vocational rehabilitation assessment which prompted the claimant to seek this review.

The issues before the Appeals Board are:

- (1) Whether the Appeals Board has jurisdiction to review this matter.
- (2) Whether the claimant is entitled to vocational rehabilitation assessment.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the entire record, the Appeals Board, for preliminary hearing purposes, makes the following findings of fact and conclusions of law:

- (1) As the Order of the Administrative Law Judge fails to contain sufficient findings to determine whether jurisdictional issues exist under which the Appeals Board is statutorily empowered to take jurisdiction over this proceeding, the matter must be remanded for additional findings.

Before the Appeals Board can exercise jurisdiction over a preliminary hearing matter, the issues must be one of those enumerated in K.S.A. 44-534a, or the Administrative Law Judge must have exceeded his jurisdiction as required by K.S.A. 44-551.

K.S.A. 44-534a(2) provides that the following issues are deemed jurisdictional and subject to review by the Appeals Board: 1) Whether the employee suffered an accidental injury; 2) Whether the injury arose out of and in the course of employment; 3) Whether notice is given or claim timely made; and, 4) Whether certain defenses apply.

The Order of Administrative Law Judge Floyd V. Palmer dated March 1, 1994, reads as follows:

- "1. That an order approving vocational rehabilitation should be and hereby is denied."

As the Order fails to set forth the judge's findings, it is uncertain whether the judge denied benefits for one of the reasons set forth in K.S.A. 44-534a mentioned above, or whether the denial was based upon some other reason.

A review of the record indicates that the respondent and insurance carrier alleged that claimant was not entitled to vocational rehabilitation benefits for three different reasons. First, the respondent alleges that claimant did not sustain accidental injury that arose out of and in the course of her employment with the respondent. Secondly, the respondent and insurance carrier deny timely notice and claim prejudice. Thirdly, the respondent and insurance carrier contend claimant is not entitled to vocational rehabilitation benefits or an assessment regardless of whether the claimant has sustained an injury for which she is entitled workers compensation benefits as the respondent alleges that claimant has no permanent disability from the alleged injury. The findings by the Administrative Law Judge are necessary to determine whether the Appeals Board has jurisdiction over this matter.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that this proceeding be remanded to the Administrative Law Judge for additional findings that are sufficient to permit a review to determine whether jurisdictional issues exist to empower the Appeals Board to review this matter.

IT IS SO ORDERED.

Dated this ____ day of April, 1994.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

cc: Paul D. Post, 5897 SW 29th Street, Topeka, KS 66614
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Floyd V. Palmer, Administrative Law Judge
George Gomez, Director